

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,
:
CR-06-776
(JFB)
-against- : United States Courthouse
Central Islip, New York
THOMAS SALOY,
:
May 2, 2008
Defendant. 10:45 a.m.
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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT COURT JUDGE

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

APPEARANCES:

For the Government:

ROSLYNN MAUSKOPF ★ ESQ MAY 16 2008 ★
UNITED STATES ATTORNEY
BY: ALAN BODE, AUSA
One Pierrepont Plaza LONG ISLAND OFFICE
Brooklyn, New York 11201

For the Defendant:

PETER RUBIN, ESQ.

Official Court Reporter:
Ph. (631) 712-6106
Fax (631) 712-6122

Paul J. Lombardi, RMR, FCRR
100 Federal Plaza - Suite 1180
Central Islip, New York 11722

Proceedings recorded by mechanical stenography.
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Paul J. Lombardi, RMR, FCRR
US District Court Reporter

1 THE CLERK: Calling case USA v Thomas Saloy.
2 Counsel please state your appearance for the
3 record.

4 MR. BODE: Alan Bode for the government.
5 Good morning, your Honor.

6 MR. RUBIN: For the defendant, Peter Rubin,
7 R-U-B-I-N.

8 THE COURT: Good morning, Mr. Rubin.
9 As you know, we are here for sentencing. Are
10 both sides ready to proceed?

11 MR. BODE: Yes, your Honor.

12 MR. RUBIN: Yes, your Honor.

13 THE COURT: Let me just go through what I have
14 received to make sure I have gotten everything that has
15 been submitted by the parties.

16 I have Mr. Rubin's sentencing memorandum. It's
17 undated but it has an Exhibit A to it.

18 I have a November 20th letter sentencing
19 submission from Mr. Rubin which attaches progress reports
20 of the defendant's treatment, as well as numerous letters
21 from the community, and obviously I have been receiving
22 those progress reports periodically while the defendant
23 has been on bail. So some of those reports were
24 repetitive, ones I already received, but, nonetheless,
25 they were attached to the letters of submission.

1 I also received an April 28th letter from
2 Mr. Rubin which attaches the most recent update report
3 from the halfway house dated April 18th, and I also
4 received a few letters independently of Mr. Rubin's, ones
5 that came in through the mail from people in support of
6 Mr. Saloy.

7 Is there anything else that I should have from
8 the parties in connection with sentencing?

9 MR. BODE: Not to my knowledge, your Honor.

10 MR. RUBIN: I believe that that's everything we
11 have submitted, your Honor.

12 THE COURT: Is there any reason, Mr. Rubin, that
13 other than the progress reports which, because of privacy
14 reasons I don't think should be made public, is there any
15 reason why I shouldn't file your sentencing submissions
16 and the letters?

17 MR. RUBIN: No reason, your Honor.

18 THE COURT: I will do that, then.

19 Mr. Rubin, have you received a copy of the
20 presentence report and the addenda, reviewed them, and
21 discussed them with Mr. Saloy?

22 MR. RUBIN: I have, your Honor.

23 THE COURT: Mr. Saloy, have you received -- you
24 can stay seated, Mr. Saloy.

25 Have you received a copy of the presentence

1 report and the addenda?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have you had sufficient time to
4 review it and discuss it with Mr. Rubin?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Rubin, does your client have any
7 objections to the report?

8 MR. RUBIN: No, your Honor.

9 THE COURT: Does the government have any
10 objections to the report?

11 MR. BODE: No, your Honor.

12 THE COURT: I adopt the information contained in
13 the presentence report as factual findings by the court.

14 As you know, pursuant to **United States v Booker**,
15 the sentencing guidelines are advisory. According to the
16 calculation in the presentence report, the advisory
17 guideline range is a level 22, criminal history category
18 I, which is 41 to 51 months.

19 Do both sides agree that's an appropriate
20 calculation of the advisory guideline range?

21 MR. BODE: Yes, your Honor.

22 MR. RUBIN: Yes, your Honor.

23 THE COURT: In terms of the advisory
24 calculation, I agree with the probation department and the
25 parties, that the advisory guideline range is 22,

1 consisting of the following, a base offense level 18 under
2 Section 2G2.2A5, a two-level increase is warranted under
3 Section 2G2.2B2 because the material included photographs
4 of minors under the age of 12, a two-level increase is
5 warranted under 2G2.2B6 because the defendant used a
6 computer to possess child pornography.

7 There is a three-level increase under 2G2.2B7B
8 because the offense involved the possession of 215 images
9 of child pornography. That's an adjusted offense level of
10 25.

11 I am awarding the defendant a three-level
12 reduction for his acceptance of responsibility under 3E1.1
13 which results in a total offense level of 22, criminal
14 history category I, which is an advisory range of 41 to 51
15 months.

16 Obviously the range is advisory. It's not
17 mandatory. I must consider it in light of all the other
18 factors that I need to consider under the law. Mr. Rubin
19 has made written submissions arguing for a nonguideline
20 sentence on a number of grounds.

21 I will now give him an opportunity to speak on
22 those issues and any other issues that he'd like to raise
23 in connection with sentencing based upon all of the
24 3553(a) factors.

25 Go ahead, Mr. Rubin.

1 MR. RUBIN: Your Honor, please, under normal
2 circumstances I would rely upon the submissions. I
3 believe that they are relatively replete with the position
4 of my office representing the defendant.

5 However, on behalf of Mr. Saloy, we are not
6 asking this court for compassion. We are not asking for
7 mercy, but we are asking for understanding. This
8 individual has come a very long way in the year and a half
9 that he's been in a custodial situation under the auspices
10 of a therapist from St. Luke's Institute.

11 Unfortunately, Judge, for many years I have
12 represented religious in similar circumstances. I can
13 tell this court that this is the first time I have seen
14 the type of progress that has been reported from the
15 institute, especially the letter of April 18th of which
16 your Honor has before him.

17 I do not think that St. Luke's would be happy
18 with this characterization, but as far as I'm concerned,
19 the defendant has somewhat become a poster child for the
20 successful completion, or at least continuing in the
21 program. This is the first time, as I told your Honor,
22 that I have ever seen reports which have shown the ability
23 of the institute to impart successful therapy and the
24 recipient of the therapy not only accepting the therapy,
25 but making progress.

1 As we asked in our memorandum, and I will ask
2 the court once again, the therapists seemed to indicate
3 that he needs at least another year of therapy. Were he
4 to be withdrawn from his therapeutic surrounding, I think
5 that all of the work that has taken place for the last
6 year and a half would probably be vitiated, and we might
7 see a remission to behavior which is not acceptable.

8 As such, I would ask your Honor to allow
9 Mr. Saloy to continue with the halfway house. They are
10 prepared to accept him back, were the court to be so
11 inclined.

12 Thank you, sir.

13 THE COURT: Okay. Thank you, Mr. Rubin.

14 Mr. Saloy, you also have the right to be heard
15 in connection with sentencing. I obviously received your
16 letter which I have reviewed, but you are entitled to
17 speak on anything you would like to say in connection with
18 sentencing.

19 THE DEFENDANT: Just, your Honor, to begin with
20 by thanking you and the court for allowing me the 17
21 months to go to St. Luke's Institute to receive therapy.

22 In the past year and a half that I have been
23 there, I have been able to focus on two major events, or
24 two major themes, and one is taking responsibility for the
25 actions that have brought me here today.

1 In looking at those actions and realizing how
2 wrong they were to in this public setting in the court to
3 apologize to the people of Long Island, to the people of
4 our society for the possession of child pornography that I
5 did possess, realizing how wrong that is and how evil that
6 is, to apologize to the court, to the church that I
7 represented and to my family.

8 Secondly, in that time I have had the
9 opportunity to, in a very therapeutic and safe and
10 challenging environment to look at the events of the 47
11 years of my life, to realize that as a child, I
12 received -- I was at the hands of abuse, both sexual abuse
13 and verbal abuse, have looked at those situations and the
14 impact that they had on me. Now, looking at those actions
15 and how I could rewire my brain to make appropriate and
16 mature decisions in all aspects of my life.

17 So, with that being said, to reiterate
18 Mr. Rubin, to ask me to allow me to continue that therapy
19 at St. Luke's Institute.

20 THE COURT: Thank you, Mr. Saloy.

21 Mr. Bode, does the government wish to be heard
22 in connection with sentencing?

23 MR. BODE: Your Honor, pursuant to the plea
24 agreement, I make no recommendation. I leave the
25 sentencing to the court's discretion.

1 I would hand up to the court a proposed final
2 order of forfeiture, which I have also given to defense
3 counsel, and ask that that be made part of any judgment.

4 THE COURT: Mr. Rubin, you have no objection to
5 that?

6 MR. RUBIN: None at all, your Honor.

7 THE COURT: I'm now going to describe the
8 sentence I intend to impose. I'll give the parties one
9 final opportunity to make any legal objection before the
10 sentence is finally imposed.

11 In imposing sentence I have carefully
12 considered, as I must, the factors set forth by Congress
13 in Section 3553(a). These factors include the nature and
14 circumstances of the offense and the history and
15 characteristics of Mr. Saloy, the need for the sentence
16 imposed to reflect the seriousness of the offense, to
17 promote respect for the law, and to provide a just
18 punishment for the offense, to afford adequate deterrence
19 to criminal conduct, to protect the public from further
20 crimes of the defendant and to provide the defendant with
21 rehabilitation.

22 I have also considered the advisory sentencing
23 guidelines issued by the sentencing commission and the
24 applicable range in this case, as well as the applicable
25 policy statements issued by the sentencing commission.

1 Another factor I must consider is the need to avoid
2 unwarranted sentencing disparities amongst
3 similarly-situated defendants. Restitution is not
4 applicable in this case.

5 I have given this sentencing a lot of thought.
6 I have spent a lot of time reviewing everything carefully
7 that's been submitted. Those include a careful review of
8 every one of the over 40 letters submitted on Mr. Saloy's
9 behalf. It is clear from these letters to me that he has
10 had an extraordinarily positive impact on the lives of
11 many people that he served as a priest on Long Island.

12 The letters are filled with stories of how he's
13 helped parishioners and members of the community in so
14 many different ways, whether it be illnesses in hospital,
15 the death of a loved one, substance abuse or caring for
16 the poor.

17 There's a letter from a mother who tells about
18 how Mr. Saloy drove to Boston to be with her during a
19 liver transplant for her son. There's a letter from a
20 mother who lost her son on 9/11 explaining how he was a
21 great comfort to her and her family. There's a letter
22 from a mother who describes as Mr. Saloy, quote, walked a
23 long journey with me when my daughter was sick with cancer
24 for many years.

25 There's another letter about how he helped

1 establish Krista House a home for the dying poor of
2 Long Island, especially those with AIDS. The love and
3 support that these people have for Mr. Saloy jumps off the
4 pages of these letters and it is clear to me he has
5 impacted the lives of many people in a very positive way
6 over the years.

7 It makes it all the more tragic that he betrayed
8 the trust of these parishioners in the community that he
9 served by engaging in this criminal conduct. But in
10 connection with sentencing, you can be assured that I have
11 carefully considered and weighed all of these good works
12 that he's performed for many years.

13 However, these good works are not the only
14 factor that I must consider. I need to look at the
15 seriousness of this offense. This is obviously an
16 extremely serious offense.

17 It involved a total of 215 images of child
18 pornography. Some of these images were extremely graphic.
19 Based upon the summary in the probation report, they
20 depicted victims which included those ranging from ages
21 one to 14, the majority of the victims ranging from age
22 six to 14. They include images including prepubescent
23 children engaged in sexually explicit conduct with adults
24 and with other prepubescent children. Some images were of
25 known victims as or identified in the National Center For

1 Missing and Exploited Children.

2 In connection with this conduct, the defendant
3 also engaged in sexual on-line chats with teenage boys.
4 In addition, the possession took place over a period of
5 one and one half years, which is a substantial period of
6 time, and I cannot emphasize, enough, the seriousness of
7 this criminal conduct.

8 I do recognize, as Mr. Rubin pointed out in his
9 papers, that there's no evidence that the defendant ever
10 physically abused any children in any way. There is no
11 evidence that he ever attempted to solicit any children
12 over the internet, or in any other way. However, that in
13 no way minimizes the extremely serious nature of the crime
14 here. If he had done those things, he would obviously be
15 looking at even more time under the guidelines.

16 The possession of these images of child
17 pornography, even apart from the absence of distribution
18 by the defendant, has been deemed by Congress as a crime
19 of violence for obvious reasons. The demand for child
20 pornography created by individuals who seek and possess
21 child pornography creates a market for their horrific
22 exploitation of children, the existence of the internet
23 and chat rooms in which these photographs are sought and
24 exchanged has exponentially magnified the problem of
25 distribution and of child pornography and the extreme

1 sexual and physical abuse of children that is inherent to
2 that entire industry.

3 As Congress has noted, the existence of child
4 pornography, quote, creates the potential for many types
5 of harm in the community, and presents a clear and present
6 danger to all children, end of quote. That's from the
7 Child Pornography Prevention Act.

8 Therefore, because of the possession, even apart
9 from the distribution of child pornography clearly
10 facilitates the victimization of children in the
11 community, punishment of those who possess child
12 pornography needs to reflect the extremely serious nature
13 of this crime.

14 I recognize that Mr. Saloy, and it is shown
15 through the progress reports that I have reviewed, has
16 made significant progress during his rehabilitation, and
17 that's why I have let that rehabilitation go forward for a
18 very long period of time, which is extraordinary for me to
19 do. And I commend Mr. Saloy for the efforts that he has
20 made, and for the progress that he has made, and I have
21 taken that into consideration. I am hopeful that the
22 treatment has reduced the likelihood that he will ever
23 resort to this conduct again.

24 Obviously the true test will come when he's
25 outside the confines of the setting of a hospital or jail

1 where he can again, among other things, have access to
2 computers, but I am certainly encouraged by his progress
3 in the treatment that he's made.

4 Even apart from the issues of specific
5 deterrence of this defendant and whether he will resort to
6 this again, I have considered the issue of general
7 deterrence, in other words, apart from whether Mr. Saloy
8 will commit this type of offense again, I have to consider
9 that there are many other individuals out there right now
10 who are either involved in child pornography now or may
11 think about possessing child pornography in the future,
12 and I need to fashion a sentence in this case that takes
13 into account the need to send a message to those
14 individuals and deter them from engaging in this type of
15 violent criminal conduct.

16 Having considered all these factors, I find in
17 the exercise of my discretion that a sentence within the
18 advisory guideline range is appropriate in this case, and
19 I intend to sentence Mr. Saloy to 41 months. That
20 sentence is necessary to reflect, among other things, the
21 seriousness of the offense, to promote respect for the
22 law, and to provide a just punishment for the offense, and
23 to afford adequate deterrence to criminal conduct.

24 I have considered all the arguments in
25 mitigation, including his rehabilitation efforts while

1 under house arrest at the hospital, his lack of a criminal
2 record, his genuine remorse as expressed at the plea,
3 today, and in his letter and his acceptance of
4 responsibility. I have considered his proffer with the
5 government, and his many good works in the community.

6 But, in my discretion, I don't believe that any
7 of these factors, individually, or in combination, are
8 sufficient to warrant here a departure from the advisory
9 guideline range, or a nonguideline sentence. However, I
10 have considered these mitigating factors in not giving him
11 a higher sentence which, absent these factors, I would
12 otherwise have imposed in this case.

13 In sum, it's my conclusion that a sentence of 41
14 months imprisonment adequately accounts for the various
15 3553(a) factors as applied to this case, as I say,
16 including the seriousness of the offense, the need for
17 deterrence, to provide just punishment, rehabilitation and
18 to promote proper respect for the law.

19 I would say with respect to rehabilitation, I'm
20 obviously sensitive to the fact that Mr. Rubin is
21 concerned that the incarceration will impact Mr. Saloy's
22 rehabilitation efforts. I'm hopeful that those efforts
23 will continue in the jail.

24 I gave him as much time as possible to complete
25 as much of that rehabilitation as he could. But there

1 comes a point when the punishment needs to be imposed, but
2 I am hopeful that he will continue the rehabilitation
3 efforts in jail, and upon his release will again join the
4 community and hopefully be a law-abiding and productive
5 member of society.

6 In addition, I intend to impose three years of
7 supervised release with the standard conditions and the
8 following special conditions. I intend to impose a mental
9 health treatment program. I intend to impose restrictions
10 on his use of computers.

11 I intend to impose the restriction regarding
12 notifying probation when he establishes a significant
13 romantic relationship and informing the other party of his
14 criminal history. I intend to impose the search
15 condition, and that he not possess a firearm, ammunition
16 or destructive device. I also intend to impose the
17 mandatory \$100 special assessment.

18 I don't intend to impose of fine because of his
19 inability to pay a fine. As I said, restitution is
20 applicable and I intend to order forfeiture of the items
21 that were listed in the plea agreement in a proposed final
22 order of forfeiture.

23 MR. BODE: May I also ask, your Honor, probation
24 generally asks for a period of supervised release, no
25 unsupervised contact with minors.

1 I would ask that as well.

2 THE COURT: I will do that as well.

3 MR. RUBIN: I would ask, if I may, your Honor,
4 prior to going into other areas, as far as the
5 unsupervised contact with minors, he does have nephews and
6 nieces as reported to Probation Officer Testa in the
7 report, and the parents indicated in the report that they
8 never had any problems with the defendant being with his
9 nephews and nieces.

10 So that need not be any supervised situation.

11 THE COURT: Mr. Bode, is there any acceptance to
12 be made for family members?

13 MR. BODE: It's a condition that we generally
14 ask for.

15 I think maybe your Honor makes that a condition
16 subject to the probation department. If probation speaks
17 with the parents, and the parents don't have any issues
18 with it, then I'd be hard-pressed to have issues with it
19 as well.

20 However, unless we have them on the record
21 saying that, I would like the probation department, while
22 he's on supervised release, to make that determination.

23 THE COURT: Okay.

24 I will word it as no unsupervised contact with
25 minors, unless there is approval by the parents and

1 probation, the probation department.

2 MR. BODE: That's fine, your Honor.

3 THE COURT: Okay.

4 Is there any legal reason I cannot impose that
5 sentence, Mr. Bode?

6 MR. BODE: No, your Honor.

7 THE COURT: Mr. Rubin?

8 MR. RUBIN: If I may, your Honor.

9 I would respectfully at this time, and this is,
10 once again, somewhat unusual, but these circumstances are
11 also somewhat unusual in the fact that the defendant's
12 activity only started, at least as we can tell, we being
13 my office, the probation department, US Attorney, after a
14 severe heart attack which nearly cost him his life. He
15 has been in a custodial situation for 18 months. I don't
16 know if this court could see fit to give him credit for
17 that 18-month period.

18 Secondly, I would ask if the court doesn't see
19 fir to doing that, prior to him surrendering to the US
20 Bureau of Prisons, I would ask the court to allow him to
21 return to the custodial situation to the halfway house in
22 order to complete the program, which is at least another
23 six months, if not another year.

24 I would be disappointed, given my history of
25 dealing with religious, to see someone who has been, at

1 least up to this point, successful in a program to be put
2 into a setting which might destroy a year and a half worth
3 of therapy.

4 THE COURT: I have considered, Mr. Rubin, all
5 the things that you have just mentioned.

6 First I have to say I was a little taken aback
7 by the suggestion in the papers which you reiterated here
8 that somehow the inappropriate behavior was triggered by
9 the heart attack. I understand the evidence is that his
10 behavior in this area started after the heart attack.

11 But I think it defies logic to me to suggest
12 that a heart attack somehow caused someone to turn to
13 child pornography. The issues here, as you know, and as I
14 know from reading the presentence report, and as Mr. Saloy
15 alluded to here today, are much deeper and much more
16 complex than saying this was the result of a heart attack.
17 So I'm hoping that the treatment, it seems to reflect the
18 complexities of this issue in trying to rehabilitate the
19 defendant.

20 In terms of giving him credit for the time in
21 the hospital, I don't think that's appropriate in this
22 case. I understand that he has had restrictions on his
23 liberty, but he has been free to be on the hospital
24 grounds, correct, during this period?

25 MR. RUBIN: He had to be within a certain

1 yardage of an analog phone because pretrial services in
2 Maryland had him wearing an ankle bracelet.

3 So his liberty still was very much restricted.

4 THE COURT: I understand that. And I thought
5 about that.

6 But it obviously is not jail, and I don't think
7 it's appropriate for me to give some type of departure
8 from the advisory range or a nonguideline sentence because
9 of that fact. As I said, usually he would have been in
10 jail all of this time in this type of case. It's a crime
11 of violence.

12 Certainly at the time of the plea he would have
13 gone in. Absent that, I wanted him to continue this
14 rehabilitation. I don't think because that has been on
15 for some period, that somehow I should subtract out that
16 time. As I said, there are other things going into this,
17 including deterrence. So I think it's necessary to have
18 the sentence of 41 months.

19 In terms of the completion of the treatment,
20 this has been a year and a half, Mr. Rubin.

21 MR. RUBIN: That's correct, your Honor.

22 THE COURT: At this point, my understanding is
23 he's in a halfway house treatment.

24 MR. RUBIN: That's correct.

25 THE COURT: And halfway house treatment is

1 usually what you have -- what he would have after his term
2 of incarceration. I let him complete, I think for about a
3 year, the main treatment program, and allowed some
4 additional time.

5 But I don't think any purpose will be served by
6 prolonging this time that he has to serve, a year or a
7 year and a half. As I said, it was extraordinary to allow
8 this to go on for this long, and I just don't think it's
9 appropriate to again adjourn letting him serve this
10 sentence.

11 They do have treatment programs in the jail.
12 Obviously I understand that's not his first choice or your
13 first choice. But I'm hopeful that he has a sufficient
14 foundation, based upon this year and a half that I let him
15 rehabilitate, to withstand the stress obviously that will
16 be associated with being in jail and not regress.

17 But I don't believe I can let this go on any
18 further. He needs to start serving his sentence.

19 MR. RUBIN: I would further ask, your Honor, as
20 Ms. Testa has reported to the court and the parties, his
21 parents are elderly and severely ill. His father has had
22 amputations, has diabetes. His mother has had a litany of
23 surgeries.

24 And I would ask the court make a recommendation
25 that he be allowed to serve whatever period of time the

1 Bureau of Prisons determines will be his maximum sentence
2 at a facility where visitation would be possible. I would
3 also request the court make a recommendation that based
4 upon the history of my client as recited in the probation
5 or presentencing report that the type of facility he be
6 put in be a minimum security facility.

7 I'm terribly afraid were he to be put in a
8 facility with inmates serving long sentences, that the
9 fact that he is a petite individual might subject him to
10 punishment way beyond what was contemplated by the
11 statute.

12 THE COURT: Does the government have any
13 objection to that?

14 MR. BODE: I think some sort -- if I read that
15 as an application for some sort of protective custody, I
16 think that might be -- is it based on his status or his
17 build?

18 If it's based on his build --

19 THE COURT: I don't think he was asking for
20 protective custody.

21 I thought you were asking to the extent
22 consistent with BOP regulations he be designated to a
23 minimum security facility.

24 MR. BODE: If it's consistent with the BOP, I
25 have no problem with that recommendation.

1 I would note should the defendant elect to do
2 so, it's purely voluntary, but in the last 24 to 36 months
3 of his sentence, such as this, a defendant can elect to go
4 into a treatment program. I believe currently it's at FMC
5 Devons in Connecticut -- Massachusetts, actually. It's a
6 daily program, and it's for persons with just this type of
7 crime.

8 It would obviously be a location where he would
9 likely be, I would think, more safe than in a general
10 population setting given that it's persons in the same
11 situation and they are obviously adept at dealing with
12 that population specifically.

13 So if the defendant is interested in getting
14 that treatment, I'd ask counsel, he might consider asking
15 for that recommendation.

16 MR. RUBIN: Absolutely, your Honor.

17 THE COURT: I should make that recommendation
18 then?

19 MR. BODE: Yes.

20 As long as counsel's on board with that, I think
21 that's a good recommendation because if there are safety
22 concerns, I think he's more safe in that location.

23 And, two, it's treatment which I think everyone
24 here agrees is appropriate, and that Mr. Saloy desires.
25 So I think that's a good track to keep him on.

1 THE COURT: That's what you would like as well,
2 Mr. Rubin?

3 MR. RUBIN: Obviously I would like him not to be
4 incarcerated.

5 But given the alternative and the mind-set, that
6 would be an ideal resolution, given the circumstances.

7 THE COURT: In terms of visitation, my
8 understanding is that all BOP facilities obviously allow
9 family members to visit.

10 To the extent his parents are elderly and sick
11 and not able to travel, I will recommend, to the extent
12 possible, he is designated to the -- they are in the New
13 York City area?

14 MR. RUBIN: That would then preclude him from
15 being in this program.

16 Since the maximum sentence your Honor is
17 imposing is 41 months and the parameters for this program
18 are for people serving two to three years, perhaps the
19 Bureau of Prisons might see fit to immediately designate
20 him to this facility, and we will worry about family
21 visitation, which I think is far outweighed by the
22 therapeutic requirements of my client.

23 THE COURT: Okay.

24 I'll put two recommendations. One, I will
25 recommend, to the extent eligible, that the defendant be

1 designated to FCI Devons?

2 MR. BODE: FMC, I believe it is, Devons,
3 D-E-V-O-N-S.

4 THE COURT: To participate in their treatment
5 program?

6 MR. BODE: Yes.

7 THE COURT: And the second recommendation will
8 be to recommend, to the extent that he is not eligible for
9 FMC Devons, that he be designated to a minimum security
10 facility, if consistent with BOP regulations.

11 MR. RUBIN: Thank you, your Honor.

12 PROBATION OFFICER: Your Honor, probation
13 requests two clarifications of the special conditions of
14 supervised release for both mental health treatment and
15 the computer restrictions.

16 We request that it be put on record the
17 conditions as set forth in the recommendation, just so
18 there's no questions when he is on supervised release.

19 THE COURT: I will incorporate all the details
20 of the restrictions that probation recommends in these
21 situations, including with respect to the mental health
22 treatment, I will include the cost provision as well.

23 My intention is to have the defendant remanded
24 today. I will allow you, Mr. Rubin, to make an argument
25 for a voluntary surrender, but that's my intention.

1 MR. RUBIN: The argument for the voluntary
2 surrender, from our position, would ask the court only to
3 allow him to return to the halfway house until such time
4 as the actual surrender designation of the facility is
5 fixed by the Bureau of Prisons.

6 He would still be in the same custodial
7 situation. I guess pretrial services would still be in
8 control of his --

9 THE COURT: You understand I'm rejecting the
10 idea that he will stay out until he completes treatment,
11 but now you are asking a more limited request, which is
12 that he be allowed to stay out until a facility is
13 designated in the hope it will be one of these facilities.

14 Is that what you are asking for now?

15 MR. RUBIN: And to give my office the ability to
16 see what we could do to facilitate one of these facilities
17 accepting him.

18 THE COURT: Does the government have any
19 objection to that?

20 MR. BODE: I leave it to the court's discretion.

21 THE COURT: I will allow for, because of the
22 issue regarding the desire to get him designated at either
23 a minimum security prison or the treatment facility at FMC
24 Devons, I think there are exceptional circumstances that
25 favor voluntary surrender to the designated facility.

1 In this situation, under the law, even if the
2 defendant does not satisfy the criteria for release under
3 Section 3143(a)(2), he may be released or be allowed out
4 on continued release if I find that the conditions of
5 release set forth in 3143(a)(1) have been met, and it is
6 clearly shown that there are exceptional reasons why his
7 detention would not be appropriate under Section 3145 C.
8 This is set forth most recently by the Second Circuit in
9 **United States v Lea, L-E-A**, 360 F.3d, 401 Second Circuit
10 2004.

11 With respect to the criteria of 3143(a)(1), I
12 find by clear and convincing evidence that under the
13 restrictions that I have already imposed, including that
14 he stay at the hospital, and not have any access to
15 children or a computer, that he is not likely to flee or
16 pose a danger to the safety of any other person or the
17 community under those conditions for the brief period of
18 time we are talking about here.

19 I also find that there are exceptional reasons
20 here, as I have discussed, relating to a desire to avoid
21 him getting housed in a maximum security facility, but to
22 allow his lawyer to make efforts to have him designated to
23 a facility or the facilities that we have discussed today.
24 I also find that it's exceptional, obviously, that he has
25 been out already for a period of a year and a half without

1 incident at the hospital, and that he has demonstrated
2 progress as I have outlined.

3 I think all of these things create an
4 exceptional circumstance that justifies continuing his
5 release pending a designation. I will set a date for
6 that.

7 Is 30 days sufficient to allow it to happen?

8 MR. BODE: I think the probation department
9 indicates six weeks, your Honor.

10 THE COURT: Six weeks.

11 Okay.

12 MR. BODE: The marshal's service indicated the
13 defendant needs to go down to the third floor today, your
14 Honor, to fill out the paperwork regarding the
15 self-surrender.

16 THE COURT: I will set the surrender date June
17 16, 2008, to the facility designated by the
18 Bureau of Prisons.

19 If a facility has not been designated by that
20 time, Mr. Rubin, he should then report, you either have to
21 ask for an extension of that date or you have to report to
22 the marshals here, correct?

23 MR. BODE: Yes, your Honor.

24 THE COURT: Hopefully six weeks will give you
25 sufficient time to look into this and give the

1 Bureau of Prisons sufficient time to designate a facility.

2 Okay?

3 MR. RUBIN: If not, I can call your deputy?

4 THE COURT: You should put in a letter, and I'll
5 address it.

6 MR. BODE: I know this is the understanding, but
7 I want to put it on the record, that Mr. Saloy is going
8 to -- after signing the paperwork at the marshals, is
9 going to be going back to the treatment facility under the
10 same conditions, electronic monitoring, et cetera, and
11 that he's going to be taken back under escort as he came
12 to court.

13 Correct?

14 MR. RUBIN: Yes.

15 Magistrate Judge Orenstein initially dictated
16 the rules of the release which I believe will continue.
17 We have a retired FBI agent who is in the employ of the
18 Diocese of Rockville Centre who has undertaken the
19 responsibility of transporting the defendant to and from
20 the facility.

21 I should advise the court that pretrial services
22 there is closed for the weekend and expects the defendant
23 to report, if he is allowed to return, which he is
24 obviously going to do, on Monday, when they will replace
25 the monitoring on him.

1 THE COURT: The other thing I have some
2 concerns, although I'm hopeful that as a result of the
3 treatment that he's undergoing that some of the issues I
4 noted, the suicidal tendencies at the time of the arrest,
5 and I want to make sure now that sentence is imposed the
6 hospital is aware of the history and he gets regular help
7 to meet that.

8 MR. RUBIN: They are well aware of the history.
9 He is taking medication for depression, and
10 hopefully that medication will address the issue.

11 THE COURT: Okay.

12 Obviously they should be specifically focused on
13 that now that he's gone through the sentencing process.

14 MR. RUBIN: We will notify them.

15 THE COURT: Is there anything else before I
16 impose this sentence?

17 MR. BODE: No, your Honor.

18 Thank you.

19 THE COURT: We have somebody in the audience.

20 MR. GIBBONS: Your Honor, if I may.

21 My name is Daniel Gibbons. I represent the
22 Diocese of Rockville Centre. Is the order that the
23 Diocese will have to pay for the escort that was just
24 described by Mr. Rubin?

25 THE COURT: I didn't order that.

1 I thought -- how has he been going in the past?
2 I don't make any orders regarding that.

3 MR. RUBIN: The initial agreement, and this
4 comes as somewhat of a surprise to me, obviously I do not
5 represent the diocese, but I have a continuing dialogue
6 with the diocese.

7 The diocese, through the director of priest
8 personnel at the initial arraignment procedures in front of
9 Magistrate Judge Orenstein, agreed to undertake
10 transportation to and from whenever required by the court.

11 This is the first I'm hearing about the fact
12 that the diocese does not want to pay for transportation.

13 MR. BODE: What I might recommend, to solve the
14 issue, if both parties would agree, is that the defendant
15 would agree to reimburse that cost, should the diocese
16 ultimately not agree to the transportation cost.

17 THE COURT: I would never order the diocese to
18 pay for that transportation. I don't think that would be
19 appropriate.

20 If there has been some type of voluntary
21 arrangement where they have been doing that and they will
22 continue to do that, then obviously that's up to them.

23 But if they do not agree, then the defendant
24 will need to bear the cost of that. Okay, Mr. Rubin?

25 MR. RUBIN: Yes.

1 MR. GIBBONS: Thank you, your Honor.

2 THE COURT: Is there anything else before I
3 impose this sentence?

4 MR. BODE: No, your Honor.
5 Thank you.

6 THE COURT: Mr. Rubin, anything else?

7 MR. RUBIN: Once again, I would ask your Honor
8 for the period of time from today going forth, until he
9 surrenders himself six weeks hence, that he be given
10 credit for the six-week period, whatever time that be.

11 THE COURT: That request is denied.

12 As I said, I'm extending this period of time as
13 I did the time prior to sentencing, as an opportunity for
14 him. But it should not be a substitute for jail.

15 There are other people that have not been given
16 that opportunity and for him to receive credit for that,
17 under these circumstances, I don't think is appropriate.
18 The time needs to reflect jail time, and not time spent at
19 a hospital.

20 I understand all these things are in my
21 discretion, and they are certainly things I can weigh
22 under 3553(a). But it's my decision, in my discretion,
23 it's not warranted under all the facts of this case.

24 Mr. Bode, do I also need to enter the forfeiture
25 in the standard judgment that's also a portion for --

1 MR. BODE: Yes.

2 THE COURT: Should I attach this to the judgment
3 and say see attached?

4 MR. BODE: If your Honor executes that and
5 attaches it to the judgment, that's exactly what the civil
6 division requests.

7 THE COURT: Okay.

8 Mr. Saloy, please rise.

9 After considering the 3553 factors, it is the
10 judgment of this court that you be sentenced to the
11 custody of the Attorney General through the
12 Bureau of Prisons for a term of imprisonment of 41 months.
13 That term of imprisonment -- I impose a three-year period
14 of supervised release to follow that term of imprisonment,
15 with the standard conditions and the following special
16 conditions.

17 One, you shall participant in a mental health
18 treatment program which may include participation in a
19 treatment program for sexual disorders as approved by the
20 probation department. You shall contribute to the cost of
21 such services rendered and/or any psychotropic medications
22 prescribed to the degree you are reasonably able, and you
23 shall cooperate in securing any applicable third-party
24 payment.

25 You shall disclose all financial information and

1 documents to the probation department to assess your
2 ability to pay. As part of the treatment program for
3 sexual disorders, you shall participate in a polygraph
4 examination to obtain information necessary for risk
5 management and correctional treatment.

6 Two, you are not to use a computer, internet
7 capable device or similar electronic device to access
8 pornography of any kind. This includes, but is not
9 limited to, accessing pornographic Web sites, Web sites
10 depicting images of nude adults or minors. You shall not
11 use your computer to view pornography stored on a related
12 computer media, such as CDs or DVDs, and shall not
13 communicate via your computer with any individual or group
14 who promotes the sexual abuse of children.

15 You shall cooperate with the probation
16 department's computer and internet monitoring program.
17 Cooperation includes but is not limited to identifying
18 computer systems, internet capable devices and/or similar
19 electronic devices you have access to and allowing
20 installation of monitoring software/hardware devices at
21 your expense.

22 You shall inform the parties that access a
23 monitored computer or similar electronic device that the
24 device is subject to search and monitoring. You are
25 limited to possessing only one personal internet capable

1 device to facilitate the probation department's object to
2 monitor your internet-related activities. You shall
3 permit random examinations of your computer and internet
4 capable devices, similar electronic devices and related
5 computer media such as CDs under your control.

6 Three. You shall have no unsupervised contact
7 with minors, unless there is approval by the parents and
8 the probation department.

9 Four. You shall notify the probation department
10 when you establish a significant romantic relationship and
11 shall inform the other party of your prior criminal
12 history concerning your sex offenses. You must notify the
13 probation department of that significant other's address,
14 age, and where the individual may be contacted.

15 Five. You shall submit your person, residence,
16 place of business, vehicle or any other premises under
17 your control to a search on the basis that the probation
18 officer has reasonable belief that contraband or evidence
19 of a violation of the conditions of release may be found.
20 The search must be conducted in a reasonable manner and at
21 a reasonable time. Failure to submit to search may be
22 grounds for revocation, and the defendant shall inform any
23 other resident that the premises may be subject to search
24 pursuant to this condition.

25 Six. You shall not possess a firearm,

1 ammunition or destructive device. I do not impose a fine
2 because of your inability to pay a fine and will not be
3 able to pay a fine in the future.

4 I impose the mandatory special assessment of
5 \$100.

6 I order that you forfeit the following
7 properties that were seized on or about November 9, 2006,
8 one eMachine processing unit, Model T2824, serial number
9 QAZ4500200447, one eMachine computer processing unit,
10 Model T3882, serial number GDF5310008071, and 90 floppy
11 computer disks and one compact disk.

12 I recommend the following to the
13 Bureau of Prisons;

14 One, I recommend, to the extent eligible, that
15 the defendant be designated to FMC Devons to participate
16 in their treatment program, and, two, I recommend, to the
17 extent that he's not eligible for FMC Devons, that he be
18 designated to a minimum security facility, if consistent
19 with BOP regulations.

20 As I said before, the defendant will be released
21 and allowed to voluntarily surrender on June 16, 2008, by
22 2 p.m. to the designated facility. All the bail
23 conditions that applied pending sentencing apply until his
24 date of surrender.

25 Mr. Saloy, to the extent that you have not

1 waived your right to appeal by virtue of your plea
2 agreement with the government, you have the right to
3 appeal your sentence. If you are unable to pay the cost
4 of appeal, you may apply for leave to appeal
5 in forma pauperis. If you cannot afford an attorney, one
6 will be appointed for you.

7 Notice of appeal must be filed within ten days
8 of the judgment of conviction which will probably be
9 issued on Monday.

10 Is there anything else for today?

11 MR. BODE: No, your Honor.

12 THE COURT: Anything from the defense?

13 MR. RUBIN: No, your Honor.

14 THE COURT: Thank you.

15 (The matter concluded.)
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